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C O N F I D E N T I A L SECTION 01 OF 02 PRETORIA 002940

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SUBJECT: FOREIGN LAND OWNERSHIP REGULATIONS UNLIKELY TO BE
IMPLEMENTED

PRETORIA 00002940 001.2 OF 002

Classified By: Charges d'Affaires Mission Donald Teitelbaum. Reasons 1
.4(b) and (d).

11. (C) Summary. After three years of study, a government-appointed panel of experts recommended on 24 July to Cabinet that South Africa implement a legal framework governing land ownership by foreigners. Contrary to media reports hinting that the days of foreign land ownership may soon be over, private discussions with panel experts and academics reveal a set of recommendations that are largely procedural and more importantly, unlikely to be implemented. END SUMMARY.

PEFOL'S MISSION AND RESULTS

12. (U) In August 2004, Minister of Agriculture and Land Affairs, Thoko Didiza, appointed a Panel of Experts on Foreign Ownership of Land (PEFOL). The panel is headed by University of South Africa Professor Shadrack Gutto and was charged with investigating "the nature, extent, trends, and impact of the acquisition and investment in land in South African by non-South African citizens." More specifically, the initial argument driving the investigation was that foreigners were driving up prices and making land reform impossible. As a result, the panel was to report on the "impact of foreign land ownership on land use and prices and consequently on the prospects for meaningful land reform."

13. (C) Though the panel could not determine exactly how much land is owned by foreigners, panel members Professor Dirk Kotze and Shadrack Gutto, both of UNISA, told PolOff that they were surprised that foreign land ownership is not as extensive as they expected and thus not an impediment to "meaningful land reform." (NOTE: A common misperception in South Africa is that the country is going to wake up one day and realize it has been taken over by foreigners and this "fact" is a serious impediment to land redistribution. END NOTE) Kotze admitted that he feels a bigger impediment to land reform is South Africans themselves, not foreigners. The panel estimates that 1 percent of urban residential properties (0.74% of total value) and 2 percent of agricultural holdings (1.75% of the total value) are owned by foreigners. However, many deeds do not include any information on the owner and those that do are only for individual landowners. Deeds held by corporations, trusts, and section 21 companies do not record nationality.

PANEL RECOMMENDATIONS

14. (C) The panel made its recommendations known to Cabinet on 24 July. Cabinet has said it will make a decision after the public has had a chance to comment on the full report, which has yet to be released. Recommendations included:

-- Consideration of a possible moratorium on sale of land to foreigners;

-- Identification of instances in which prohibition of foreign ownership of land could be justified, e.g., water catchment areas, land along borders, land surrounding military installations, etc;

-- Special ministerial approval in cases where certain categories of land are being considered for disposal, e.g., land earmarked for land reform, restitution, or integrated human settlement;

-- Consideration of long-term leasing of land as opposed to outright sale;

-- Setting up an inter-ministerial committee consisting of Department of Agriculture and Land Affairs, Provincial and Local Government, Environmental Affairs and Tourism and Public Works;

-- Compulsory disclosure of foreign buyer's details in line with Financial Intelligence Act.

IMF Deputy Resident Representative Robert Burgess told PolOff that the recommendations appear reasonable, especially when compared to countries like Malaysia, where a foreigner can

PRETORIA 00002940 002.2 OF 002

own "property," but not land (i.e., an apartment in a multi-story building is permissible since it is not physically taking land away from a national), or Mexico, where a foreigner cannot own land 31 kilometers from the coast or 62 kilometers from a border. Professor Ruth Hall at University of Western Cape's Programme for Land and Agrarian Studies also points out that in Africa, Zambia, Tanzania, Kenya, Nigeria, Uganda and Ghana are among countries that impose restrictions, while Brazil, Chile, Canada, Switzerland, Denmark, and many states in the U.S. also have restrictions.

NEXT STEPS, IF ANY

15. (C) Immediately following the 24 July Cabinet meeting, the SAG promised to make the report available for public comment "soon." Professor Hall told PolOff on 15 August that the Director-General's office in the Department of Agriculture and Land Affairs confirmed to her that the report has not yet been made available, "nor is it imminent." Hall believes that because of the hypersensitivity to outside criticism, the SAG has already effectively abandoned the panel. Convening the panel, she said, was merely a "deft political maneuver that gave space to popular demand at the time" and a "remarkable holding mechanism" to justify slow pace of land reform.

COMMENT

16. (C) COMMENT: SAG interest in regulating foreign land ownership is understandable given apartheid's legacy of a landless black population and the fact that "foreigners" are often an easy scapegoat in any society. However, the SAG

is unlikely to publicly emphasize the fact that foreign land ownership is not a reason for the government's lack of progress in redressing land concerns. Since 1994, the SAG has made dismal process in land redistribution -- about 4 percent of land has been transferred from white farmers to blacks since the end of apartheid. The panel bought the SAG three years and "proof" to show it is taking action. Luckily for the SAG, the only outcry has been from international realtors and not ANC grassroots members who do not yet equate a house with land.

Teitelbaum